

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

DONTEVIS SMITH,
KENNETH K. STALLINGS, SR., and
EDDIE FRANKLIN
V.

PLAINTIFFS

CIVIL ACTION NO. 3:19-CV-633-DPJ-FKB

NOXUBEE COUNTY, MISSISSIPPI

DEFENDANT

ORDER

Plaintiff Eddie Franklin, bringing suit under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201–19, has alleged that Defendant Noxubee County failed to pay the statutorily prescribed overtime rate for the hours Franklin accrued working as a deputy sheriff. Compl. [1] ¶¶ 18–22. Franklin filed a motion in limine, asking the Court to prohibit the introduction of evidence related to (1) “[t]he reasons for Mr. Franklin’s administrative leave”; (2) another lawsuit, now settled, in which Franklin was named as a co-defendant; and (3) Franklin’s arrest on September 24, 2020. Mot. [33] at 1.

Although the County has indicated that it will not address the first two subjects—at least as Franklin describes them—there is no need to grant a motion in limine because this case is set for a bench trial. Orders granting motions in limine prevent reference to information that is so “highly prejudicial to the moving party that a timely motion to strike or an instruction by the court to the jury to disregard the offending matter cannot overcome its prejudicial influence on the jurors’ minds.” *O’Rear v. Fruehauf Corp.*, 554 F.2d 1304, 1306 (5th Cir. 1977) (citation omitted).

Absent a jury, no such risks exist, and “motions in limine . . . serve no real purpose.” *Lee Swimming Pools, LLC v. Bay Pool Co. Constr., LLC*, No. 1:18-CV-118-LG-RPM, 2021 WL

1579933, at *1 (S.D. Miss. Feb. 4, 2021) (quoting *Morgan v. Mississippi*, No. 2:07-CV-15-MTP, 2009 WL 3259233, at *1 (S.D. Miss. Oct. 8, 2009)). Moreover, bench trials differ from jury trials because the fact finder in a bench trial must hear the evidence before deciding whether it is admissible.

Accordingly, the parties can make their records at trial, and the Court will then determine whether the evidence should be admitted and considered. If not, then the record for appeal will reflect the evidence that the Court excluded.

IT IS, THEREFORE, ORDERED that Plaintiff's Motion in Limine [33] is denied without prejudice to objections at trial.

SO ORDERED AND ADJUDGED this the 1st day of September, 2021.

s/ Daniel P. Jordan III
CHIEF UNITED STATES DISTRICT JUDGE